



# ABORIGINAL CULTURAL RIGHTS

## Cultural rights in international law

### Fact sheet

#### What is international law?

International law defines the legal responsibilities of nation-states in their conduct with one another and their treatment of individuals within their boundaries.

International law is established by customary practice or treaty and is generally recognised by nation-states as binding. The United Nations (UN) oversees the development and compliance of international law.

- An international human rights convention (also called a covenant) is a binding treaty that comes into force when it is ratified by a nation-state by adopting it as domestic law.
- A declaration is not legally binding but carries moral weight and is generally adopted by the international community.
- General Comments provide guidance, explaining how to interpret provisions of treaties.

Aboriginal and Torres Strait Islander people hold distinct human rights set out in international law.

#### What this means for Australia

Section 51(xxix) of Australian Constitution allows the Australian Government to enter into treaties. An international human rights convention is not directly binding in Australian law until the Australian Government agrees to be bound by the convention and creates legislation making the international rule into a domestic law.

Given Australia's federal system of government, Australian states also have power to make laws that cover issues affecting states. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) enacts a number of human rights contained in the *International Covenant on Civil and Political Rights* into the law of Victoria.

Aboriginal cultural rights are protected by international treaty obligations. The Charter protects 20 human rights including Aboriginal cultural rights in section 19(2).

The Charter imposes a duty on Victorian public authorities to give proper consideration to human rights (for example, the government, Victoria Police, local councils) as well as an obligation to interpret laws in a way that is consistent with human rights.

International law and the judgments of domestic, foreign and international courts and tribunals can be considered in interpreting laws.

#### What does international law say about Aboriginal cultural rights?

Cultural rights are recognised in international human rights conventions and declarations as well as General Comments made by treaty bodies.

The following international law instruments, which Australia has endorsed to some degree, are relevant to cultural rights and are explained below:

- Universal Declaration of Human Rights
- *International Covenant on Civil and Political Rights*
- United Nations Declaration on the Rights of Indigenous Peoples
- *International Covenant on Economic, Social and Cultural Rights*

#### Universal Declaration of Human Rights (UDHR)

The UDHR was adopted by the UN General Assembly on 10 December 1948. The formation of the UDHR was the first time states agreed on a comprehensive statement of human rights.

The UDHR declares that human rights are universal and are to be enjoyed by all people. This includes civil and political rights, such as the right to life, liberty and free speech. It also includes economic, social and cultural rights, such as the rights to social security, health and education.

The UDHR is significant because it has given rise to a range of other international covenants, which are legally binding on the states that ratify them.

The UDHR is not a treaty so it does not create legal obligations for states. However, the UDHR carries influence on the development of international human rights law and expresses fundamental human rights values.

### International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is a treaty that came in force in 1976. Australia agreed to be bound by the ICCPR on 13 August 1980 (subject to certain reservations).

The ICCPR commits its parties to protect and respect the civil and political rights of individuals. These rights include the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

#### Article 27 of the ICCPR

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

Section 19(2) of the Charter is based on article 27 of the ICCPR as well as decisions of the UN Human Rights Committee.

The UN Human Rights Committee considered the scope of article 27 to extend to protect the cultural rights of Indigenous peoples:

*The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.*  
(UN Human Rights Committee General Comment No 23)

### United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP is an international declaration that seeks to restore relationships between Indigenous peoples and governments.

The UNDRIP sets out the minimum standard for the survival, dignity, security and wellbeing of Indigenous peoples as both individuals and as collectives.

In 2009 Australia gave its formal support to the UNDRIP and committed to undertake initiatives consistent with the human rights standards contained in the declaration.

Section 19(2)(d) of the Charter was modelled on article 25 of the UNDRIP.

#### Article 25 of the UNDRIP

*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

The UNDRIP also contains the right for Indigenous peoples to determine their identity or membership.

#### Article 33(1) of the UNDRIP

*Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.*

Although the UNDRIP is not a formally binding treaty it “reflects a global consensus on Indigenous peoples’ rights” (OHCHR Fact Sheet 9 – Indigenous peoples and the United Nations Human Rights System) and guides the Australian government in its interaction with Aboriginal and Torres Strait Islander people.

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

Australia agreed to be bound by the ICESCR on 10 December 1975.

The ICESCR commits its parties to respect and protect economic, social and cultural rights including the right to an adequate standard of living, the right to education, the right to fair wages and the right to safe working conditions.

## Article 15 of the ICESCR

1. The States Parties to the present Covenant recognize the right of everyone:

(a) to take part in cultural life

...

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

The UN Committee on Economic, Social and Cultural Rights provided guidance on the meaning of 'culture' and 'cultural life' in Article 15:

*In the Committee's view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression 'cultural life' is an explicit reference to culture as a living process, historical dynamic and evolving, with a past, present and a future.* (UN Committee on Economic, Social and Cultural Rights, General Comment No 21, 2009).

Although the ICESCR does not form part of Australia's domestic law, its broad interpretation of 'culture' and 'cultural life' provides guidance in interpreting Aboriginal cultural rights in section 19(2) of the Charter and in accordance with international law standards.

### Remember

- International law defines the legal responsibilities of nation-states in their conduct with one another and their treatment of individuals within their boundaries.
- Developments in international law have no direct binding effect in Australia until the Australian Government agrees to be bound by the international rule and create domestic legislation.
- By enacting the Charter, Victoria complies with some of Australia's international obligations.
- Aboriginal cultural rights are protected under section 19(2) of the Charter.
- Section 19(2) of the Charter is based on article 27 of the ICCPR.
- Interpretations of article 15 of the International Covenant on Economic, Social and Cultural Rights provide guidance on the meaning of 'culture' and 'cultural life'.

### More about Aboriginal Cultural Rights

You can download more resources from [humanrightscommission.vic.gov.au/acr](http://humanrightscommission.vic.gov.au/acr)



**Victorian Equal Opportunity  
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### Need more information?

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Were these resources useful? Easy to use? Would you like to see something else included? Please email us at [communications@veohrc.vic.gov.au](mailto:communications@veohrc.vic.gov.au).

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